BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K St., N.W.
WASHINGTON, D.C. 20001-8002

Date:October 29, 1997
Case Nos: 96-INA-0192

In the Matter of:

MRT IN MILL RUN TRAVEL SERVICE
Employer

On Behalf of:

ARLITTE MINASIAN
Alien

Before: Holmes, Huddleston and Neusner
Administrative Law Judges

JOHN C. HOLMES
Administrative Law Judge

DECISION AND ORDER

This case arose from an application for labor certification on behalf of alien, Arlitte Minasian ("Alien") filed by Employer MRT In Mill Run Travel Service ("Employer") pursuant to 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(a)(5)(A)(the "Act"), and the regulations promulgated thereunder, 20 CFR Part 756. The Certifying Officer ("CO") of the U.S. Department of Labor, San Francisco, California, denied the application, and the Employer and Alien requested review pursuant to 20 CFR 656.26.

Under 212(a)(5) of the act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor may receive a visa if the Secretary of Labor ("Secretary") has determined and certified to the Secretary of State and to the Attorney General that (1) there are not sufficient workers who are able, willing, qualified and available at the time of the application and at the place where the alien is to perform such labor; and, (2) the employment of the alien will not adversely affect the wages and working conditions of the U.S. workers similarly employed.

Employers desiring to employ an alien on a permanent basis must demonstrate that the requirements of 20 CFR, Part 656 have been met. These requirements include the responsibility of the Employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other means in order to make a good faith test of U.S. worker availability.

The following decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties.

STATEMENT OF THE CASE

On February 9, 1995, the Employer filed an application for labor certification to enable the Alien to fill the position of Bi-Lingual Secretary in its travel service.

The duties of the job offered were described as follows:

Responsible for correspondence, file management, office organization and typing. Answer phones, take messages, respond to routine client inquiries, perform data input using computer.

Supervises 0 employees and reports to the Manager. A high school education and 2 years experience were required. Special requirement was fluency in Arabic. Wages were $2,000.00 per month. (AF-41-76)

On May 9,1995, the CO issued a NOF denying certification. The CO stated that employer may have violated 20 C.F.R. 656.20(c)(8). Correspondence from Employer revealed that alien had for the period May 12, 1992 to present been a travel agent for Employer. “Where the employer initially failed to disclose that the alien is already working for the company, it is now presented that the position held by the alien is a professional position, but the labor certification position for which the alien is beneficiary is to be a clerical position. However, we are not persuaded that a travel agent is truly scheduled to step down to a secretarial role upon the granting of alien labor certification.” The CO required substantial documentation including convincing rebuttal evidence that alien would truly change positions, articles of incorporation, alien’s interest, if any, in employer company, and independence of hiring person from employer. Secondly, Employer may not have accurately stated the actual minimum requirements for the position in violation of 20 CFR 656.21(b)(5). “The requirement of 2 years of experience (as) a secretary does not appear to meet the employer’s true minimum requirements in that whereas the statement made on Form ETA 750 B indicates that the alien worked as a secretary from 6/88 to 1991, the employer has attached a letter, undated, from her apparent employer at that period, Raymond Jouayed, Lufthansa G.S.A., giving her dates of prior employment as 10/88 to 7/91, and stating that during that period she was a secretary, travel agent and sales officer.” Documentation explaining this situation was required.(AF-35-39).

Employer, June 7,1995, forwarded its rebuttal, stating that the alien had made a “clerical error” in listing the position as travel agent, when, in fact the alien had had no prior training as a travel agent. Employer, further stated that alien was not

related to any of the owners or officers of the firm, nor to any of the owners of the parent corporation, Peace on Earth Trading, Inc. A "Statement by Domestic Stock Corporation", dated February 18, 1987 was included. A letter was, also, attached, signed by Raymond Jouayed, under the letterhead of Sinbad Travel Agency, Syria, "G.S.A. of Lufthansa Airlines" which stated:"This is to confirm that Ms. Arlitte Miasian, was employed by our company from Jun 1988 to Jul 1991. During her association with this company, in her capacity of secretary, her responsibilities included the handling of all office correspondence, its filing system, typing, answering incoming telephone calls, and entering computer data. In essence, majority of her responsibilities (70%) consisted of secretarial/clerical works, while at the same time she was involved whenever needed (30%), in assisting travel agents in their duties and performance."(AF-14-34).

On June 15, 1995, the CO issued a Final Determination denying certification. He contended that Employer had filed inconsistent statements, and that the statement that a "clerical error" had been made in first stating and later denying that alien was a travel agent and not a secretary was unpersuasive. The 1986 statement by domestic stock corporation was not the articles of incorporation asked for and thus no persuasive rebuttal has been furnished with respect to the current officers. Moreover, the documentation is not responsive to the NOF with respect to the independence of the hiring official.(AF-11-13)

On July 14, 1995, Employer filed a request for review and reconsideration of Final Determination. (AF-1,10)

DISCUSSION

Section 656.25(e) provides that the Employer's rebuttal evidence must rebut all the findings of the NOF, and that all findings not rebutted shall be deemed admitted. Our Lady of Guadalupe School, 88-INA-313 (1989); Belha Corp., 88-INA-24 (1989)(en banc). Failure to address a deficiency noted in the NOF supports a denial of labor certification. Reliable Mortgage Consultants, 92-INA-321 (Aug. 4, 1993).

We agree with the CO that Employer's statement that prior experience of alien with employer listed as a "travel agent" was a clerical error is unpersuasive. If she has gained that experience and now is being allegedly hired by Employer as a secretary, Employer has failed to furnish the documentation required by the CO that she will fulfill the job of secretary.

Similarly, Employer failed to furnish the documentation required with respect to Articles of Incorporation, but instead furnished a 1986 statement by domestic stock corporation. This is not merely a technical, insignificant failure to comply given the circumstances of this case, which, *inter alia* includes a statement under "Sinbad Travel Agency" which is allegedly connected to Lufthansa, a financial document of Mill Run Travel

Agency with a Brooklyn, New York address, which, also, lists “A. Minasian “ as an employee as of March, 1994, reference, but no explanation, to a parent company of “Peace on Earth Trading, Inc.” Given this murky background with respect to just where and when alien worked, what she did, and what type of operation Employer is, the request by the CO for Articles of Incorporation is fully justified in this case. Since Employer has not furnished the documentation required by the CO and such request was reasonable, grounds for affirmance of denial of labor certification lie. Collector’s International, Ltd.89-INA-133 (Dec. 14, 1989)

ORDER

The Certifying Officer's denial of labor certification is AFFIRMED.

For the Panel:

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JOHN C. HOLMES
Administrative Law Judge